

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

Introduction

The Indian Child Welfare Act is a mandatory federal law and shall be implemented accordingly.

The underlying premise of the Act is that Indian tribes have sovereign rights and legal powers with respect to Indian children and, as governments, have a vital legal role to play in determining whether Indian children should be separated from their families and culture. The Act recognizes the authority of tribal and state courts to make decisions regarding the welfare, care, custody and control of Indian children.

ICWA has two primary provisions. First, it sets up requirements and standards for child-placing agencies to follow in the placement of Indian children. It requires, among other things, providing remedial, culturally appropriate service for Indian families before a placement occurs; notifying tribe(s) regarding the placement of Indian children and, when placement must occur, it requires that children be placed in Indian homes. Failure to follow these procedures can result in invalidation of the court's action. Second, the Act provides for Indian tribe(s) to reassume jurisdiction over child welfare matters, including developing and implementing juvenile codes, juvenile courts, tribal standards, and child welfare services.

Today, most Indian tribe(s)--including all tribes in Montana--are in a position to provide at least some services to their own children. Each reservation in Montana has a tribal court and tribal codes which guide the provision of child welfare services. In addition, the tribes have entered into contracts and agreements with the State of Montana to further clarify the role of tribal and state government in child protective services and ICWA compliance for Native American children both on and off the reservation. State Child Protection Specialists should be aware of the provisions of these contracts when working with Native American families.

Definitions

An **Indian Child** is an unmarried person under 18 who is either a member of an Indian tribe(s) or eligible for membership in an Indian tribe(s) and the biological child of a member of an Indian tribe(s) **as determined by the tribe(s)**.

A **Parent** is any biological parent or parents of an Indian child, or any Indian person who has legally adopted an Indian child, including adoptions under tribal law and custom. "Parent" does not include the unwed father when paternity hasn't been

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

acknowledged or established.

An **Indian Custodian** is

- an Indian person who has legal custody of an Indian child under tribal law or custom, or under state law; or
- an Indian person to whom temporary physical care, custody and control has been transferred by the parent of such child.

An **Indian Child's Tribe(s)** is

- the tribe(s) in which the child is a member or is eligible for membership;
- in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the tribe with which the Indian child has more significant contacts as determined by the court; or
- the tribe which recognizes the child as a tribal member.

An **Extended Family Member** is defined by the law or custom of the Indian child's tribe(s) or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. Extended family members include non-Indian relatives.

A **Qualified Expert Witness** is

- a member of the Indian child's tribe(s) who is recognized by the tribal community as knowledgeable of tribal customs pertaining to family organization and child rearing practices;
- a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social, cultural and child rearing practices of child's tribe(s); or
- a professional person who has substantial experience in

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

providing services to children and families and who possess significant knowledge of and experience with Indian culture, family structure, and child rearing practices in general.

A list of potential Qualified Expert Witnesses for Montana is available at the Child and Family Services Division webpage <http://www.dphhs.mt.gov/cfsd/icwa>

A Qualified Expert Witness must testify at foster care placement proceedings and termination of parental rights proceedings.

If a petition requests placement of an Indian child in a temporary foster home, the district court cannot grant the petition unless the Qualified Expert Witness requirement is met.

Domicile or Residence means a place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which one returns when not working or attending school. Generally, the residence of the parent with whom the child customarily resides is the residence of the child. (See Mont. Code Ann. § 1-1-215.) Usually, the child's residence will be where he is physically living. However, if the child is physically residing off the reservation with relatives on a temporary basis, the residence may be the residence of the parent or custodian with whom the child customarily resides.

Standard of Proof

Standard of proof depends on the underlying ICWA proceedings as follows:

- 1) Foster Care placement: "Clear and Convincing evidence"
- 2) Termination of Parental rights: "Beyond a reasonable doubt"

The proper evidentiary standard for determining "active efforts" under 25 U.S.C. §1912(d) is the same standard applied to the underlying ICWA proceeding.

Applicability

The Indian Child Welfare Act (ICWA) confers exclusive jurisdiction to tribal courts over any child custody proceeding involving an Indian child who resides or is domiciled on the reservation or is a ward of the tribal court. This means that only the tribal courts have the power to decide child custody matters concerning Indian children living on the reservation or who are

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

wards of the tribal court. If the child who is the subject of a dependency and neglect proceeding is an Indian child living on the reservation or a ward of the tribal court, the state court must transfer the child and the proceedings to the tribal court of the appropriate tribe if requested to do so by the tribe and absent good cause to the contrary.

If it is determined that the Indian child is not domiciled or residing on the reservation and is not a ward of the tribal court, the state court has the power to proceed with the dependency and neglect proceeding within the guidelines established under the ICWA.

Pre-Hearing Determinations

Is the child an Indian child?

The Child Protection Specialist shall first determine if the child is an Indian child as defined by ICWA or this manual. To assist in this determination, the worker must complete the ICWA Checklist (DPHHS-CFS-ICWA-252 pgs 17-20). The checklist must be completed for all children, not only an Indian child, starting from when a client is first generated on CAPS. Often this information is easily obtained from the family or by calling or writing the Indian tribe(s) thought to be the child's tribe(s), or the regional Bureau of Indian Affairs (BIA) office. For additional assistance the Child Protection Specialist may contact the DPHHS ICWA Program Specialist in Helena.

In order to verify the child's tribal membership, the Child Protection Specialist must also send the Request for Verification of Status (DPHHS-CFS/ICWA-251, page 21, to Designated Tribal Agents for Notice.

Montana ICWA Designated Agents for Notice: See page 40

For names/addresses of Designated Agents for Notice for out of state tribes please contact the CFSD ICWA Program Specialist in the Program Bureau Office in Helena.

If the Child Protection Specialist has reason to believe that the child is an Indian child but the identified tribe does not respond to the request for information, the worker must request information regarding tribal affiliation from the BIA.

For involuntary proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana) notices shall be sent to the BIA at the following address: 2021 4th Avenue, Billings, Montana

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

59101. All notices involving Confederated Salish and Kootenai tribe's children shall be sent to Portland Area Director, 911 NE 11th Avenue, Portland, Oregon, 97232. For information about all other BIA Area offices contact the ICWA Program Specialist at the Program Bureau Office or the following website http://www.dhs.state.or.us/policy/childwelfare/icwa/bia_offices.htm

If there is any possibility that the child may be an Indian child, but the fact cannot be verified informally either through the tribe or BIA, the Child Protection Specialist should request the county attorney to petition the court to seek formal verification of the child's status from the BIA. The Child Protection Specialist shall document in the case record all efforts to discover the child's Indian ancestry.

Circumstances under which a state court has reason to believe a child involved in a child custody proceeding is an Indian include but are not limited to the following:

1. Any party to the case, Indian tribe(s), Indian organization or public or private agency informs the court that he or she is an Indian child.
2. Any public or state-licensed agency involved in child protection services or family support has discovered information, which suggests that the child is an Indian child.
3. The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.
4. The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.
5. An officer of the court involved in the proceeding has knowledge that he or she may be an Indian child.

This listing is not intended to be complete, but it does list the most common circumstances giving rise to a reasonable belief that a child may be an Indian.

Tribal Enrollment

Enrollment is not always required in order to be a member of a tribe(s). Some tribes do not have written enrollment records.

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

| | |
|--------------------------|--|
| | <p>Others have rolls that list only persons who were members as of a certain date. Enrollment is the common evidentiary means of establishing Indian status, but it is not the only means nor is it necessarily determinative. (<u>United States v. Broncheau</u>, 597 F.2d 1260, 1263, 9th Cir. 1979.)</p> |
| | <p>Only a tribe (or BIA, if tribe does not respond) makes the determination of a child's enrollment/membership status. The Child Protection Specialist does not make the determination of an Indian child's tribal membership or eligibility status.</p> |
| Determining Jurisdiction | <p>Once it has been determined that he or she is an Indian child, the child's domicile or residence or their status as a ward of the tribal court shall be determined.</p> <p>If the child is a ward of a tribal court, the case must be transferred to the tribal court. Again, a phone call or letter to the child's tribe(s) may provide this information, although it should be verified in writing.</p> <p>An Indian child living off the reservation may be considered to be legally domiciled on the reservation if his or her parents' or guardian's permanent residence is on the reservation.</p> <p>If the child is living or "domiciled" on an Indian reservation, the state court has no power to act. The case must be dismissed, and the matter transferred to the tribal court.</p> <p>If the child is domiciled or residing off the reservation, the state court has the jurisdiction to hear the case, but ICWA will still apply to the proceedings.</p> |
| Filing the Petition | <p>Any case that could result in an involuntary foster care placement or termination of parental rights is covered by the ICWA.</p> <p>The petition should include an allegation that the child is an Indian, a statement of the child's tribal affiliation, if known, and, if unknown, a request that the court seek verification of the child's eligibility for tribal membership and a determination of the child's tribe(s).</p> <p>Whenever an Indian child is removed from a foster care home or facility for the purpose of further foster care, pre-adoptive or adoptive placement, such placement shall be in accordance</p> |

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

with the ICWA provisions, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. The ICWA requirements include notification to the tribe(s) of these changes.

Right to Notice and Right to Intervention

The Indian Child Welfare Act requires that notice of all pending involuntary proceedings be sent to: (1) the child's parents; (2) an Indian custodian; or (3) any tribe(s) that may be the child's tribe(s). The Act requires that the notice inform those receiving it of their right to intervene in the proceedings.

Notice of all proceedings shall be sent to the child's tribe(s) regardless of prior interest shown by the tribe(s). The tribe(s) may intervene at any time in the process of involuntary placement proceedings.

A copy of each notice, together with a return receipt or other proof of service, must be filed with the court. The Child Protection Specialist should work with the county attorney to fulfill the notice requirements. Generally, the county attorney sends the notice to all the required parties, but it is the Child Protection Specialist's responsibility to coordinate this with the county attorney, thereby insuring this is done.

The notice shall be written in clear and understandable language and include the following information:

- the name of the Indian child;
- the child's birth date and birthplace;
- names and addresses of the child's birth family;
- his or her tribal affiliation;
- a copy of the petition, complaint or other document by which the proceeding was initiated;
- the name of the petitioner and the name and address of the petitioner's attorney;
- a statement of the right of the biological parents or Indian custodians and the Indian child's tribe(s) to intervene in the proceeding;

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

- a statement that if the parents or Indian custodians are unable to afford counsel, one will be appointed to represent them;
- a statement regarding the right of the natural parents or Indian custodians and the Indian child's tribe(s) to have, on request, 20 days (or such additional time as may be permitted under state law) to prepare for the proceedings;
- the location, mailing address and telephone number of the court;
- a statement of the right of the parents or Indian child's tribe(s) to petition the court to transfer the proceeding to the Indian child's tribal court;
- the potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians; and,
- a statement in the notice to the tribe(s) that, since child custody proceedings are usually conducted confidentially, tribal officials should keep the information contained in the notice concerning the particular proceeding confidential and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act.

The more informative the notice, the less likely it will be subject to challenge.

In an ICWA case, the notice of all involuntary proceedings involving an Indian child in state court shall be personally served on the child's parent(s) **or** Indian custodian in accordance with Mont. Code Ann. § 41-3-422. Proof of service is required. Notice shall also be sent by registered mail, with proof of service required, to any tribe(s) that may be the child's tribe. Such notifications are initiated by the County Attorney's Office in the county where the action takes place or by the attorney representing the Department.

Montana Tribes ICWA Designated Agents for Notice: See page 40. For names/addresses of Designated Agents for out of state tribes please contact the CFSD ICWA Program Specialist

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

| | |
|----------------------------|--|
| | at the Program Bureau Office. |
| Right to Appointed Counsel | Any indigent parent(s) (Indian or non-Indian) or Indian custodian has the right to court-appointed counsel in any proceeding that could result in foster care placement or termination of parental rights. If the district court does not appoint an attorney for indigent parent(s) of an Indian child, the Secretary of Interior may be asked to pay for legal representation. |
| Intervention | <p>An ICWA Intervention by an Indian tribe(s) means specifically that the respective tribal court and/or designated tribal entity has legal access to all DPHHS records in a monitoring capacity, as well as the right to make formal recommendations regarding CPS case plans, foster care placements, and family treatment issues.</p> <p>When Child and Family Services takes custody of an Indian child in an involuntary proceeding, the Child Protection Specialist should contact the Social Services Director (of the tribe(s) where the child may be enrolled) to alert the tribal staff that a notice of proceedings has been (or will be) sent on the child and to discuss the child's situation, including custody status, reason for court action, and all pertinent information regarding the child's need for care. The Child Protection Specialist should request assistance for identifying an appropriate placement for the child in accordance with the Indian Child Welfare Act. The Child Protection Specialist should request assistance in identifying a Qualified Expert Witness who can address the appropriateness of, and need for, placement of the child. All Regional and Tribal Social Service Offices will have a list of potential Qualified Expert Witnesses. The worker may also call CFSD ICWA Program Specialist.</p> |
| Right to Intervention | <p>Either parent, the Indian custodian and the Indian child's tribe(s) have the right to intervene and participate in the proceeding.</p> <p>If the tribe requests intervention, the tribe's designated representative shall be allowed to fully participate in staff discussions regarding the child's placement and case plan. All proposed plans developed without the designated representative being personally present shall be shared with the tribe's designated representative prior to implementation by DPHHS staff, unless an emergency placement is required.</p> |
| Transfer | An ICWA Transfer of Jurisdiction by an Indian tribe means |

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

specifically that the respective tribal court assumes all legal authority of the CPS case, as well as the accountability and responsibility for the direct social work case management and record keeping. DPHHS will transfer the entire case file, including all case notes (and electronically transfer the case via CAPS) to tribal authorities upon receipt of a District Court order granting the transfer of jurisdiction. Following transfer to tribal jurisdiction, the case should be closed.

Request for Transfer to Tribal Court

Even where the child is domiciled off the reservation and the state court has the jurisdiction to proceed, either parent, the Indian custodian or the Indian child's tribe(s) may request that the state court transfer the proceedings to the tribal court of the child's tribe(s). Unless either parent objects, or the tribal court declines the transfer or the court determines that good cause to the contrary exists for denying transfer, the state court must transfer the proceeding.

Good Cause: Transfer

Good cause to deny transfer may exist if:

1. the proceeding was at an advanced state when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing;
2. the Indian child is over 12 years of age and objects to the transfer;
3. the evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses; or
4. the parents of a child over five years of age are not available, and the child has had little or no contact with the child's tribe(s) or members of the child's tribe(s).

The Hearing Proof Requirements

In addition to the proof requirements of the state statutes, in a case involving an Indian child there must be a showing that continued custody by the parent(s) or Indian custodian is likely to result in serious emotional and physical damage to the child.

Qualified Expert Witness requirement

The requirement of testimony from a Qualified Expert Witness assures that the involuntary placement of an Indian child into foster care or the termination of the parent-child legal relationship does not conflict with the specific cultural values of the child's tribe. 25 U.S.C. §1912 (e) and (f) of the Indian Child

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

Welfare Act requires that the action proposed by the state be supported by the testimony of a qualified expert witness.

Removal of an Indian child from his or her family must be based on competent testimony from one or more experts qualified to speak specifically to the issue of whether, taking into account the cultural norms and childrearing practices of the child's tribe and community, continued custody by the parent(s) is likely to result in serious physical or emotional damage to the child, and if such conduct will likely cause harm, can the parents modify their conduct to insure the child's physical and emotional safety. If the proceeding is related to foster care, the testimony of the Qualified Expert Witness must establish the damage to the child by "clear and convincing evidence." If the proceeding is termination of parental rights, the testimony of the Qualified Expert Witness must establish the damage to the child by evidence "beyond a reasonable doubt". In either case, there must be testimony of a "Qualified Expert Witness" (as defined on pages 2-3), regarding this question.

Qualified Expert Witness Payment

ICWA Qualified Expert Witnesses are paid by Child and Family Services Division for the services they provide in ICWA cases. Services include court testimony, preparation for testimony as well as participation in case related conferences and meetings. (See ICWA Qualified Expert Witness Fees billing form and instructions, pages 24-25 for details). Each Qualified Expert Witness that provides services is required to complete and submit the billing document. Assistance in the completion of the form is available from the ICWA Program Specialist.

All Qualified Expert Witnesses are required to sign a confidentiality form, page 23, of this section.

Potential Qualified Expert Witnesses should only be given the information which is necessary for them to testify in court regarding whether return of the children to the parent's custody is likely to result in serious emotional or physical damage to the child. If it is not necessary for the qualified expert witness to read the entire file in order to make this determination, then s/he should not be given access to the entire file. They should only be given the information necessary to provide a basis for the in-court testimony. Interviews with parents, children and other involved parties, as requested by the Qualified Expert Witness, should be arranged by the Child Protection Specialist.

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

All files or documents that the Qualified Expert Witness uses must be returned immediately after each hearing.

All regional offices have a list of potential Qualified Expert Witnesses or the worker can contact the ICWA Program Specialist. A list is also available at the Child and Family Services Division webpage: <http://www.dphhs.mt.gov/cfsd/icwa>

Failure to use an appropriate expert witness, could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of the Indian Child Welfare Act. See In the Matter of the Adoption of H.M.O., 289 Mont. 509, 962 P.2d 1191, 55 St. Rep. 710 (1998). And In the Matter of K.H. and K.L.E., 294 Mont. 446, 981 P.2d 1190 (1999).

Active Efforts

The state must also satisfy the court that active efforts have been made to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family and those efforts have proved unsuccessful. The court must be informed as to what services were provided. This is best accomplished by including a description of the services and programs offered or provided for the family in the affidavit and by testifying about the services at the hearing.

ICWA requires specific evidentiary standards be applied to active efforts. The evidentiary standard to be applied is dependant on the underlying ICWA proceeding. If the proceeding involves foster care placement active efforts must be established by “clear and convincing evidence.” In proceedings to termination of parental rights active efforts must be established by “beyond a reasonable doubt.”

Active efforts for foster care placement must be made from the time a Child Protection Specialist becomes involved with the family until the Show Cause hearing is held. See In the Matter of G.S., jr., and S.S., 2002 MT 245, 312 Mont. 108, 120, 59 P.3d 1063, 1072 (2002).]

Emergency Removal Under ICWA

Indian children subject to the exclusive jurisdiction of the tribal court who are temporarily off the reservation are still subject to the relevant emergency placement provisions of state law. However, ICWA requires that DPHHS terminate the emergency placement as soon as it is no longer necessary to prevent imminent physical damage or harm to the child. If it is not safe

**Child and Family Services Policy Manual: Legal Procedure
Indian Child Welfare Act**

to return the child to the parents or Indian custodian, the worker should transfer the child to the jurisdiction of the child's tribe(s). If the transfer cannot be arranged within 48 hours, a petition for a TIA or emergency protective services must be filed in state court to provide court sanction of the emergency placement until the transfer can be arranged.

Prior to making placements, Child Protection Specialists are strongly encouraged to use a Family Group Decision-making process to determine the best placement for the child.

**Voluntary
Proceedings**

If a parent of an Indian child, who meets the ICWA definition of an Indian child, proposes to voluntarily place his or her child in foster care or relinquish his or her parental rights to the child, certain requirements of ICWA must be met.

Foster Care Placement

If the parent is voluntarily placing an Indian child in foster care, the parent must sign Consent to Foster Care Placement agreement form. (Consent forms for birth mother, ICWA-1, or birth father, ICWA-2, are found on pages 26-30 of this section). However, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction, (State Court or Tribal Court) and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.

All Voluntary Parental Agreements are limited to 30 days.

The ICWA placement preferences also apply to voluntary foster care placements.

Relinquishment

The relinquishment must be executed before a judge and accompanied by the judge's certification that the terms and consequences of the relinquishment have been fully explained to the parent and were fully understood by the parent(s). (See ICWA-6, Birth Mother's Waiver, Relinquishment and Consent Form, and ICWA-7 Birth Father's Waiver, Relinquishment and Consent Form, pages 31-38.

The relinquishment of an Indian child may not be executed until at least ten days after the birth of the child.

The Child Protection Specialist shall notify the child's tribe(s) of the relinquishment. The parent's desire for confidentiality does

**Child and Family Services Policy Manual: Legal Procedure
Indian Child Welfare Act**

not outweigh the worker's responsibility to notify the tribe(s).

When the relinquishment is of a child, who is defined as an Indian child under ICWA, the consent may be withdrawn for any reason prior to the entry of termination of the parent-child legal relationship and the child returned to the parent(s). Once the TPR order has been issued, the relinquishment cannot be withdrawn without proof that the consent was obtained by fraud or duress.

After the entry of the final decree of adoption, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress. If the parent(s) alleges fraud or duress, the parent may petition the court to vacate the decree of adoption within two years of the date of the adoption decree. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the adoption decree and return the child to the parent(s). However, no adoption which has been effective for at least two years may be invalidated by alleging fraud or duress.

**Placement of
Indian Children:
Foster Care
Placement**

25 U.S.C. §1915 sets forth the following list of people who must be given preference in the following order as a foster care placement for the child, in the absence of good cause to the contrary:

1. a member of the child's extended family, including non-Indian family members;
2. a foster home licensed, approved, or specified by an Indian child's tribe(s);
3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. an institution for children approved by the tribe which has a program suitable to meet the Indian child's needs.

**Good Cause:
Preference Order**

An Indian child shall be placed with a person or facility listed above unless there is a good cause not to follow the preference order.

Good cause not to follow the preference order may be established in the following cases:

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

- if appropriate, the request of the biological parent(s) or the child (if the child is of sufficient age) shall be considered;
- the extraordinary physical or emotional needs of the child require a specific placement outside of the preference order; or
- the unavailability of suitable families for placement despite a diligent search.

Note: If the Indian child's tribe has established a different order of preference by resolution or tribal code, the Child Protection Specialist making the placement shall follow the tribally established order of preference if the placement is in the least restrictive setting appropriate to the particular needs of the child. Please contact the ICWA Program Specialist or the specific Tribal Social Services Director for more information regarding Montana Tribes.

Placement of Indian Children: Adoptive Placement Process

25 U.S.C. §1915 sets forth the following list of people who must be given preference in the following order for an adoptive placement for the child, in the absence of good cause to the contrary:

1. a member of the child's extended family;
2. other members of the child's tribe(s); or
3. other Indian families.

NOTE: The Montana Supreme Court, In the Matter of C.H., 57 St. Rep. 300, 2000 Mont. 64, 299 Mont. 62, 997 P.2d 776, (2000), stated that the placement preferences under ICWA must be strictly applied and that the ICWA must be liberally construed in favor of a result that is consistent with the preferences.

Failure to follow the placement preferences without good cause, could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of the Indian Child Welfare Act. Note: When an Indian child is placed adoptively, the Child Protection Specialist must complete the DPHHS-CFS/ICWA-250. (See page 22 of this section)

An adoption of a Confederated Salish and Kootenai Indian

Child and Family Services Policy Manual: Legal Procedure Indian Child Welfare Act

child in State District Court is not valid without the consent of CSKT Tribal Court. Pursuant to Public Law 280 and Tribal Ordinance 40A.

Confidentiality:
Disclosure Exceptions

Child protective services records may be disclosed to an agency of an Indian tribe(s) or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act. This allows the Child Protection Specialist to contact relatives of the child for possible placement as an alternative to regular foster care.

CAPS

When entering an Indian client on CAPS, the worker must identify the client as American Indian by entering the code "AI" in the 'ethnicity' field on CLID. This will automatically take the worker to the ICWD screen to enter tribal affiliation information. If the enrollment number is known, enter it in the 'enrollment number' field. If the worker has not yet received the enrollment information from the tribe(s), s/he may temporarily enter "enrolled" in the 'enrollment number' field. However, the worker must return to that screen when they receive the information and enter the enrollment number. If there is no enrollment number for the child because the child is recognized by the tribe(s) as Indian or a descendent of an enrolled member, enter "recognized" or "descendent" in the "enrollment number" field.

CAPS has a DocGen for Request for Verification of Status (D200) and a DocGen for Notification of Judicial Proceedings (D105) to be used for complying with the ICWA requirements. When using these DocGen's, save the completed documents to the mainframe.

Child and Family Services Policy Manual: Legal Procedure
Indian Child Welfare Act

References

Indian Child Welfare Act, 25 USC 1901, et seq.
Guidelines for State Courts, 44 Fed. Reg. 67584, November 26, 1979.

Mont. Code Ann. § 41-3-102
Mont. Code Ann. § 41-3-109
Mont. Code Ann. § 41-3-205
Mont. Code Ann. § 41-3-301
Mont. Code Ann. § 41-3-302
Mont. Code Ann. § 41-3-422
Mont. Code Ann. § 41-3-423
Mont. Code Ann. § 41-3-432
Mont. Code Ann. § 41-3-427
Mont. Code Ann. § 41-3-437
Mont. Code Ann. § 41-3-444
Mont. Code Ann. § 41-6-609
Mont. Code Ann. § 42-2-102
Mont. Code Ann. § 42-6-109

ICWA CHECKLIST

To be used in all cases How to determine if the child is American Indian as defined by ICWA

Definition of an Indian Child: An "Indian child" means any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe:

REGARDING: _____ DOB: _____ SSN: _____ Date: _____
(name of youth)

1. To determine if the child is American Indian:
 - a. Ask child is s/he is American Indian? **Yes** ☐ **No** ☐
If yes, what tribe _____
 - b. Ask if mother of child is American Indian **Yes** ☐ **No** ☐
If yes, what tribe _____
 - c. Ask if father of child is American Indian **Yes** ☐ **No** ☐
If yes, what tribe _____
 - d. If known, ask paternal grandparents if American Indian **Yes** ☐ **No** ☐
If yes, what tribe _____
 - e. If known, ask maternal grandparents if American Indian **Yes** ☐ **No** ☐
If yes, what tribe _____
2. If you determined the child may be an American Indian, identify possible tribal affiliation:
 - a. Which tribe or tribes _____
Note: If tribe unknown, contact BIA @ 247-7943.
 - b. Date ICWA-251 sent to the tribe(s) _____
 - c. Date of response from tribe _____
 - d. If tribe unknown, date of response from BIA _____

Note: If the child might be American Indian, you must fill out the ICWA-251.

Make a courtesy call to social service staff of tribe in question and inform them that you mailed the form to them. If you have questions about where to send documents, call the ICWA Program Manager at the Program Bureau Office, (406) 841-2400.

3. Is the child American Indian as defined by ICWA? **Yes** ☐ **No** ☐
Note: Court orders may be invalidated in cases involving an Indian child where there was non-compliance with the major Provisions of the ICWA. Therefore, when in doubt, it is better to consider the child an Indian child until it is established with reasonable certainty that the child is not eligible for membership in a tribe.

REQUIRED

Worker Signature: _____ **Date:** _____
Supervisor Signature: _____ **Date:** _____

If it is determined the child is not American Indian, ICWA is no longer applicable, therefore, you may stop here.

ACTIVE EFFORTS

Any party seeking to effect a foster care placement of, or termination of parental rights to an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Active efforts are based on the offer of services. Active efforts for foster care placement must be made from the time worker becomes involved with the family until the Show Cause hearing is held. See In the matter of G.S., jr., and S.S., 2002 MT.245, 312 Mont. 108, 120, 59 P.3d 1063, 1072 (2002).

A cornerstone in the application of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions. Active Efforts applies specifically to those services and activities that affect the reunification plan.

Order of preference in the absence of good cause shall be given to:

- a. A member of the child's extended family, including non-Indian family members.
- b. A foster home licensed, approved, or specified by an Indian child's tribe.
- c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- d. An institution for children approved by the tribe that has a program suitable to meet the Indian child's needs.
- e. If placement is not ICWA compliant, good cause not to follow the preference order must be documented.

[Tribal Resolution can change the preference order. The Department is required to follow the Tribes designated order of preference according to 25 USC §1915(c)]

VOLUNTARY PARENTAL AGREEMENT

(check box after completed)

As of October 1, 2003 all parental agreements have a 30 day limit.

1. The parent signed the parental agreement. ☐
2. The parent signed the agreement before either a state district court judge or tribal court judge. ☐
3. The child is at least 10 days old before mother signed agreement. ☐
4. The judge before whom the parent signed the agreement has certified in writing that the terms and consequences of the agreement were fully explained to the parent in detail, and in a language understood by the parent, and that the parent understood the explanation. ☐

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

REQUIRED

Worker signature: _____ **Date:** _____

Supervisor signature: _____ **Date:** _____

VOLUNTARY RELINQUISHMENT
(check box after completed)

1. The biological mother signed the relinquishment before either a state district court judge or tribal judge. ☐
The biological father signed the relinquishment before either a state district court judge or tribal judge. ☐
2. The child was at least 10 days old before mother signed relinquishment ☐
3. The child was at least 10 days old before father signed relinquishment. ☐
4. The judge before whom the birth mother signed the relinquishment has certified in writing that the terms and consequences of the relinquishment were fully explained to the birth mother in detail, and in a language understood by the birth mother, and that the birth mother understood the explanation. ☐
5. The judge before whom the birth father signed the relinquishment has certified in writing that the terms and consequences of the relinquishment were fully explained to the birth father in detail, and in a language understood by the birth father, and that the birth father understood the explanation. ☐
6. Child's tribe was sent notice of the relinquishment. ☐

INVOLUNTARY PROCEEDINGS
(check box after completed)

1. The active efforts made to provide remedial services are documented in the case record. ☐
2. Description of active efforts made to provide remedial services are included in the affidavit which was submitted to the court. ☐
3. Contacted all identified family members about possible foster care placement. ☐
4. Qualified expert witness contacted. ☐
5. Legal notice sent to the child's tribe by registered mail with return receipt. ☐
6. Notification sent to parents. ☐
7. Social worker affidavit contained information regarding Tribal membership. ☐

REQUIRED

Worker signature: _____ Date: _____

Supervisor signature: _____ Date: _____

ADOPTIONS
(check box after completed)

After the entry of a final decree of adoption of an Indian child in any state court, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated.

1. ICWA–250 completed. ☐
2. Order of preference for adoptive placement used in the absence of good cause to the contrary. ☐

Preference order:

- a) Member of child's extended family;
- b) Other members of the child's tribe; or
- c) Other Indian families.

An Adoption of a Confederated Salish and Kootenai Indian child in State District Court is not valid without the consent of CSKT Tribal Court. Pursuant to Public Law 280 and Tribal Ordinance 40A.

[Tribal Resolution can change the preference order. The Department is required to follow the Tribes designated order of preference according to 25 USC §1915(c)]

Note: failure to follow the placement preferences without good cause could subject the adoption, foster care or pre-adoptive placement to being declared invalid because of a failure to follow the provisions of ICWA.

REQUIRED

Worker signature: _____ **Date:** _____

Supervisor signature: _____ **Date:** _____

STATE OF MONTANA
Department of Public Health and Human Services
REQUEST FOR VERIFICATION OF CHILD'S INDIAN STATUS

Date: _____

Name of Tribe: _____

Address: _____

REGARDING: _____
(name and address of child)

DOB: _____ SS#: _____

DOB: _____ SS#: _____

REGARDING: _____
(name and address of child)Dear _____:
(Tribal ICWA Designated Agent for Notice)

The Department of Public Health and Human Services has received a report of alleged child abuse or neglect concerning the above named child. We have reason to believe that this child may be of American Indian descent.

The mother is (or believed to be) _____ name and address _____ unknown _____

The father is (or believed to be) _____ (name and address) _____ unknown _____

The maternal grandparents are (or believed to be) _____. Name and address _____

The paternal grandparents are believed to be _____. Name and address _____

Other known relatives include _____ names and addresses _____

The child (children) is/are currently:

_____ In the custody of the parents

_____ In state custody and _____ placed in emergency foster care _____ not placed.

An involuntary Child Custody Proceeding has been initiated yes _____ no _____

_____ Notice of Involuntary Child Custody Proceeding has been attached _____ will follow

Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., we are hereby requesting a verification of this child's status as either a member or eligible for membership in your Tribe. Please advise whether this child is:

- ☐ a.) A member of your Tribe,
☐ b.) Eligible for membership in your Tribe, and the biological child of a member of a tribe
☐ c.) Is not a member of your Tribe or not eligible for membership in your Tribe

Since this child's legal status in regard to the Indian Child Welfare Act is uncertain, the Department is not able to properly plan for the child nor provide appropriate services without the requested information. Therefore your immediate attention and response is greatly appreciated. Please return the completed form to the address below.

Sincerely,

Department of Public Health and Human Services

DPHHS office use only. Date returned receipt signed: _____

Copies to:

DPHHS case file
 Tribal Social Services Director
 County Attorney's office

INDIAN CHILD WELFARE ACT REPORTING FORM

Please submit this form to the Clerk of Court when filing the decree. The form is to be submitted for every child adopted, even if the answer to question one is NO. The Indian Child Welfare Act requires that the court must provide a copy of the decree and the following information in any Indian child adoption proceeding to the Bureau of Indian Affairs.

Date form Completed: ____ / ____ / ____

Name of Child (before adoption): _____

1. Is the child a member of any Indian Tribe? ____ YES ____ NO
2. Is the child eligible for membership in any Indian Tribe and a biological child of a member of any Indian Tribe? ____ YES ____ NO
3. If the answer to a question one is YES, please state:
 - a) The name and Tribal affiliation of the child: _____
 - b) The names and addresses of the biological parents: _____

 - c) The names and addresses of the adoptive parents: _____

 - d) The agency having files or information related to the adoption: _____

An adoption of a Confederated Salish and Kootenai Indian child in State District court is not valid without the consent of CSKT Tribal Court. Pursuant to public Law 280 and Tribal Ordinance 40A.

4. Name of person completing the form:

Name

Date

STATEMENT OF CONFIDENTIALITY

I, _____, the undersigned, having agreed at the request of the Montana Department of Public Health and Human Services, Child and Family Services Division (the Department) to testify as a Qualified Expert Witness on behalf of the child or children who are the focus of _____ County Cause No. _____, understand the following:

That, in the course of preparing for and providing testimony in the above-referenced matter, I will be provided with, have access to, or become aware of, confidential case file information and information regarding child abuse and neglect which is confidential and is not available to the public; and

That said confidential case file information and information regarding child abuse and neglect is strictly confidential, and the distribution, dissemination, or discussion of said information is limited by Montana law at §41-3-205 of the Montana Code Annotated, the violation of which is punishable as a misdemeanor crime.

Based upon the foregoing, I hereby agree as follows:

1. That I will not discuss the above-referenced case outside of the courtroom with any person other than an employee or official of the Department or the County Attorney or Deputy County Attorney who is representing the Department in this case, without prior permission from the Department or the County Attorney's Office;
2. That I will not provide to any person, organization, or entity, access to or copies of any documents, papers, files, or records provided to me by the Department or by the County Attorney's office in connection with this case, without prior permission from the Department or the County Attorney's Office;
3. That, at the conclusion of my testimony in this case, I will return to the Department or the County Attorney's office any documents, papers, files, or records provided to me by the Department or the County Attorney's office in connection with this case; and
4. That I will keep in the strictest confidence any information I receive or become aware of as a result of my participation in this case, regardless of the source of said information, and regardless of whether the case continues to be pending, or whether the case has concluded.

My signature on this document indicates that I have read this document in its entirety, that I fully understand everything stated in this document, and that I specifically understand that my failure to uphold my promises stated in this document may constitute a violation of Montana law, and may subject me to criminal prosecution.

Signature

Date: _____

ICWA Qualified Expert Witness Fees

(Revised 7/09)

I, _____, at the request of the Department of Public Health and Human Services, Child and Family Services Division provided services as an ICWA Qualified Expert Witness in _____ County.

I provided services on behalf of the following child(ren):

| Name(s) | Date(s) |
|---------|---------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Professional Services Provided:

Preparation (See instructions for billing details)

_____ Hours @ \$25.00 per hour = _____

Court Testimony

_____ Hours @ \$25.00 per hour = _____

Case conferences

_____ Hours @ \$25.00 per hour = _____

Travel time

_____ Hours @ \$25.00 per hour = _____

Other (See instructions for billing details)

_____ Hours @ \$25.00 per hour = _____

Total

_____ Hours @ \$25.00 per hour = _____
(maximum reimbursement- \$500)

Other Expenses

Destination _____ **Miles** _____ @ \$.55 per mile = _____

Lodging (attach receipt) _____ @ state rates = _____

Meals (see instructions) _____ max \$23 per day = _____

Total- _____

Total Reimbursement (professional services, mileage, lodging, meals) = _____

DATE: _____

NAME: _____

SIGNATURE: _____

ADDRESS: _____

_____ **City/State**

_____ **Zip Code**

Federal Tax ID Number is: (SSN/TIN) _____

Child and Family Services Supervisor Approval- _____ **Date** _____

ICWA Qualified Expert Witness Fees Instructions

The Indian Child Welfare Act (ICWA) requires the testimony of a Qualified Expert Witness to insure that the involuntary placement of an Indian child into foster care or the termination of the parent-child legal relationship does not conflict with the specific cultural values of a child's tribe. ICWA Qualified Expert Witnesses are paid by the Child and Family Services Division for the services they provide in ICWA cases.

1. Professional Services- \$25.00 per hour for the following services:

1. Preparation for court -includes case file review, discussions with the Child Protection Specialist, other Child and Family Services staff and attorneys; interviews with child, parents or other involved parties. Initial hearing preparation time is limited to 3 hours billing time; **additional preparation time limited to 1 hour unless approved in advance by Child and Family Services Division Supervisor**
2. Court Testimony
3. Case Conferences (including attendance at FGDM meetings, Foster Care Review meetings or other treatment/case planning meetings that the Qualified Expert Witness is required to attend)
4. Travel time
5. Other- Courthouse time- waiting to testify, courthouse conversations with social workers/county attorney etc. **Billing time limited to 1 hour without supervisor approval.**

2. Other Expenses

Transportation- mileage for personal car use is paid at the current state rate \$.55/mile. Rate is subject to change. Enter destination(s) and the total miles on the QEW billing form. Multiply by the mileage rate.

Lodging reimbursement is at state rates only. State Identification cards will be required to receive state rates for lodging. State Identification cards are available through the ICWA Program Specialist in Helena.

Meal reimbursement rates- \$5.00- breakfast; \$6.00- lunch; \$12.00- dinner.

You receive breakfast if your stay is overnight or you leave for your destination before 7:00 am. You receive lunch if you are out of town for more than 3 hours between 10:00 am and 3:00 pm. You receive dinner if you stay overnight or if you arrive home after 6:00 pm. Long distance phone calls are not reimbursed.

The maximum reimbursement is \$500, plus state per Diem (meals and lodging) and mileage reimbursement. Payments for these services are arranged through the appropriate Child and Family Services Division Regional Administrator or their designate.

Please submit a separate billing form for each family. Submit completed billing form to the office that arranged for your services. The Child and Family Services Supervisor will sign all invoices and enter into the CAPS system for approval

After this invoice is entered into CAPS and approved, an invoice will be issued. Please verify the dates, dollar amount, and sign the invoice. Mail the signed invoice to:
Montana Child & Family Services Division, P.O. Box 8005, Helena, MT 59604.

If you have questions concerning this matter, please call the ICWA Program Specialist or the Program Bureau Chief.

(Name), District Court Judge

(9/07)

____ Judicial District
Street Address or P.O. Box
City, State and Zip Code
Phone Number

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

| | | |
|------------------------|---|----------------------------------|
| IN THE MATTER OF |) | Cause No. DN-_____ |
| |) | (Companion to Cause No. DN-____) |
| (Initials), |) | |
| |) | |
| |) | BIRTH MOTHER'S CONSENT |
| |) | TO FOSTER CARE |
| |) | PLACEMENT |
| YOUTH IN NEED OF CARE. |) | |
| _____ |) | |

STATE OF MONTANA)
 : ss.
County of _____)

(Birth mother's full name), being first duly sworn upon oath, deposes and says:

1. I am the birth mother, born on (date), residing at (current address), of the minor child, (child's name), who was born on (date) in (city, state). I am (age) years old.
2. I am an enrolled member of the _____ Tribe of the State of _____, and my child is a member of or is eligible for membership in this tribe.
3. After carefully considering the best interests of my child, I hereby consent to the placement of my child by the Montana Department of Public Health and Human Services, Child and Family Services Division (the Department), in foster care for a

period of no more than 30 days. It is my understanding that my child will be placed with
(*name of foster parent and foster parent's address*).

4. I understand that I may withdraw my consent to foster care placement at any time, and that if I do withdraw my consent, my child will be returned to my custody at that time.

5. The consequences of consenting to foster care placement have been explained to me. I fully understand the consequences of consenting to foster care placement, and no threats or promises have been made to induce me to grant my consent to foster care placement.

6. I do not intend to waive any of my rights under the Indian Child Welfare Act of 1978 by signing this consent.

DATED this ____ day of _____, ____ at (*place/city/state*),
at (*time* ____ *a.m./p.m.*).

Birth Mother

JUDGE'S CERTIFICATION

Pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), I,
the Honorable _____, District Court Judge of the Montana
____ Judicial District Court, _____ County, do hereby certify that the
terms and consequences of the foregoing consent to foster care placement have been
fully explained in detail to the parent, either in English or in another language
understood by the parent, that the terms and conditions of the consent were fully

understood by the parent, and that the consent to foster care placement was executed in writing and recorded before me on this _____ day of _____, _____.

DISTRICT COURT JUDGE

(Name), District Court Judge
____ Judicial District
Street Address or P.O. Box
City, State and Zip Code
Phone Number

Rev. (9/07)

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

| | | |
|------------------------|---|----------------------------------|
| IN THE MATTER OF |) | Cause No. DN-____) |
| |) | (Companion to Cause No. DN-____) |
| (Initials), |) | |
| |) | BIRTH FATHER'S CONSENT |
| |) | TO FOSTER CARE |
| |) | PLACEMENT |
| YOUTH IN NEED OF CARE. |) | |
| _____ |) | |

STATE OF MONTANA)
 : ss.
County of _____)

(Birth father's full name), being first duly sworn upon oath, deposes and says:

1. I am the birth father, born on (date), residing at (current address), of the minor child, (child's name), who was born on (date) in (city, state). I am (age) years old.

2. I am an enrolled member of the _____ Tribe of the State of _____, and my child is a member of or is eligible for membership in this tribe.

3. After carefully considering the best interests of my child, I hereby consent to the placement of my child by the Montana Department of Public Health and Human Services, Child and Family Services Division (the Department), in foster care for a period of no more than 30 days. It is my understanding that my child will be placed with (name of foster parent and foster parent's address).

4. I understand that I may withdraw my consent to foster care placement at any time, and that if I do withdraw my consent, my child will be returned to my custody at that time.

5. The consequences of consenting to foster care placement have been explained to me. I fully understand the consequences of consenting to foster care placement, and no threats or promises have been made to induce me to grant my consent to foster care placement.

6. I do not intend to waive any of my rights under the Indian Child Welfare Act of 1978 by signing this consent.

DATED this ____ day of _____, _____ at (*place/city/state*),
at (*time*____ *a.m./p.m.*).

Birth Father

JUDGE'S CERTIFICATION

Pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), I, the Honorable _____, District Court Judge of the Montana _____ Judicial District Court, _____ County, do hereby certify that the terms and consequences of the foregoing consent to foster care placement have been fully explained in detail to the parent, either in English or in another language understood by the parent, that the terms and conditions of the consent were fully understood by the parent, and that the consent to foster care placement was executed in writing and recorded before me on this _____ day of _____, _____.

DISTRICT COURT JUDGE

(Name), District Court Judge
Judicial District
Street Address or P.O. Box
City, State and Zip Code
Phone Number

(Form ICWA-6)

(Rev 9/07)

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN THE MATTER OF

(Initials),

YOUTH IN NEED OF CARE.

Cause No. DN-_____
Companion to Cause No.
DN-_____)

**AFFIDAVIT OF BIRTH MOTHER'S
WAIVER OF ALL PARENTAL
RIGHTS, RELINQUISHMENT OF
CHILD AND CONSENT TO
ADOPTION**

STATE OF MONTANA)
 : ss.
COUNTY OF (County Name))

(Birth Mother's full name), being first duly sworn upon oath, deposes and says:

1. I am the BIRTH MOTHER, born on (MM/DD/YYYY), residing at: (current address), of the minor child, (child's name). I am (age) years old. I am an enrolled member of (name of tribe) Tribe.

2. (Child's name) was born on the (numeric) day of (month), (year), in (City), (State). The child is an enrolled member of (or is eligible for membership in) (name of tribe) Tribe, (Add: enrollment number or other figure that denotes membership). The minor child is more than 10 days old at the time this document is being signed.

3. After carefully considering the best interests of my minor child, I hereby relinquish care, custody and control of the minor child to the Montana Department of Public Health and Human Services, (address), (phone #).

4. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody to the Department of Public Health and Human Services.

5. I knowingly, unequivocally and voluntarily give my consent to have any court of competent jurisdiction terminate my parental rights and award permanent legal custody with the right to consent to adoption to the Department of Public Health and Human Services.

6. I understand that under Mont. Code Ann. § 42-2-411 (2007), I may condition a relinquishment on (a) the child's father relinquishing his parental rights and consenting to adoption by a specified date; or (b) a court decision to not terminate the father's parental rights to the child. I (*do/do not*) condition my relinquishment upon (*state grounds*).

7. I understand that upon my signature of this relinquishment and consent to the adoption of this minor child, all parental rights and obligations will be extinguished, except for arrearages of child support, unless waived by the person to whom they are owed.

8. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

9. I have received at least 3 hours of counseling explaining, among other things, the legal and personal consequences of an adoption, my options and legal rights, available resources, and the rights my child will have to access records or search for me.

10. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

11. I have not been offered any money or anything of value for executing this document, except as may be allowed pursuant to Mont. Code Ann. §§ 42-7-101 and 42-7-102 (2007).

12. I understand that I have the right to be represented by a lawyer who does not represent the adoptive parents. I understand that the expense for such legal advice is an expense that may be paid for by the adoptive parents pursuant to Mont. Code Ann. §§ 42-7-101 and 42-7-102 (2007).

13. I expressly waive my rights to any notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the (*Department*), and any notices of the changes in the legal status of the child.

14. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

15. I acknowledge that I have received a copy of this document and a copy of a written agreement by the Department to accept temporary custody and provide support and care to the child until an adoption is finalized.

16. By signing this document, I understand that I am relinquishing all of my parental rights to the minor child, (*child's name*). My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this _____ day of _____, _____, at (*place/city/state*), at (*time*), _____ (*a.m. or p.m.*).

Birth Mother

JUDGE'S CERTIFICATION

Pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), I, the Honorable _____, District Court Judge of the Montana _____ Judicial District Court, _____ County, do hereby certify that the

terms and consequences of the foregoing Birth Mother's Waiver of All Parental Rights, Relinquishment of Child and Consent to Adoption have been fully explained in detail to the parent, either in English or in another language understood by the parent, that the terms and conditions of the consent were fully understood by the parent, and that the consent to foster care placement was executed in writing and recorded before me on this _____ day of _____, _____.

DISTRICT COURT JUDGE

(Name), District Court Judge
Judicial District
Street Address or P.O. Box
City, State and Zip Code
Phone Number

(Form ICWA-7) (Rev 9/07)

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN THE MATTER OF

(Initials),

YOUTH IN NEED OF CARE.

STATE OF MONTANA

COUNTY OF (Name)

) Cause No. DN-_____
) (Companion to Cause No. DN-_____)
)
) **AFFIDAVIT OF BIRTH FATHER'S**
) **WAIVER OF ALL PARENTAL**
) **RIGHTS, RELINQUISHMENT OF**
) **CHILD, AND CONSENT TO**
) **ADOPTION**

(Birth Father's full name), being first duly sworn upon oath, deposes and says:

1. I am the BIRTH FATHER, born on (MM/DD/YYYY), residing at: (current address), of the minor child, (child's name). I am (age) years old. I am an enrolled member of (name of tribe) Tribe.

2. (Child's name) was born on the (numeric) day of (month), (year), in (City), (State). The child is an enrolled member of (or is eligible for membership in) (name of tribe) Tribe, (Add: Enrollment number or other figure that denotes membership). The minor child is more than 10 days old at the time this document is being signed.

3. After carefully considering the best interests of my minor child, I hereby relinquish care, custody and control of the minor child to the Montana Department of Public Health and Human Services, (address), (phone #).

4. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody to the Department of Public Health and Human Services.

5. I knowingly, unequivocally and voluntarily give my consent to have any court of competent jurisdiction terminate my parental rights and award permanent legal custody with the right to consent to adoption to the Department of Public Health and Human Services.

6. I understand that under Mont. Code Ann. § 42-2-411 (2007), I may condition a relinquishment on (a) the child's mother relinquishing her parental rights and consenting to adoption by a specified date; or (b) a court decision to not terminate the mother's parental rights to the child. I (*do/do not*) condition my relinquishment upon (*state grounds*).

7. I understand that upon my signature of this relinquishment and consent to the adoption of this minor child, all parental rights and obligations will be extinguished, except for arrearages of child support unless waived by the person to whom they are owed.

8. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for executing this document, except as may be allowed pursuant to Mont. Code Ann. §§ 42-7-101 and 42-7-102 (2007).

11. I understand that I have the right to be represented by a lawyer who does not represent the adoptive parents. I understand that the expense for such legal advice

is an expense that may be paid for by the adoptive parents pursuant to Mont. Code Ann. §§ 42-7-101 and 42-7-102 (2007).

12. I expressly waive my rights to any notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the (*Department*), and any notices of the changes in the legal status of the child.

13. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

14. I acknowledge that I have received a copy of this document and a copy of a written agreement by the Department to accept temporary custody and provide support and care to the child until an adoption is finalized.

15. By signing this document, I understand that I am relinquishing all of my parental rights to the minor child, (*child's name*). My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this _____ day of _____, _____, at (*place/city/state*),

(*time of day*) (*a.m. or p.m.*)

Birth Father

JUDGE'S CERTIFICATION

Pursuant to the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), I,
the Honorable _____, District Court Judge of the Montana
_____ Judicial District Court, _____ County, do hereby certify that the
terms and consequences of the foregoing Birth Father's Waiver of Parental Rights,
Relinquishment of Child and Consent to Adoption have been fully explained in detail to
the parent, either in English or in another language understood by the parent, that the
terms and conditions of the consent were fully understood by the parent, and that the
consent to foster care placement was executed in writing and recorded before me on
this _____ day of _____, _____.

DISTRICT COURT JUDGE

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by *(Birth Father's full name)*, on *(month, day, and year waiver signed)*, the Department hereby accepts the relinquishment and accepts custody of *(child's name)*, a minor child, born *(child's DOB - MM/DD/YYYY)*, to *(name of person accepting custody of child)*, residing at *(address of custodian)*. The Department agrees to support and care for *(child's name)* until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this _____ day of _____, _____.

Department of Public Health and Human Services
(Name, Title)

(DPHHS Office Address)

Parent/Legal Custodian of Minor Child

Parent/Legal Custodian of Minor Child

Montana Tribes ICWA Designated Agents for Notice:

| | |
|--|--|
| | |
| | |
| Assiniboine and Gros Ventre Tribes: Fort Belknap Reservation | Blackfeet Tribe Blackfeet Reservation |
| ICWA Case Manager | Inquiry Technician |
| Fort Belknap Social Services | Blackfeet Tribe ICWA Program |
| 656 Agency Main Street | PO Box 588 |
| Harlem, MT 59526 | Browning, MT 59417 |
| (406)353-8346 | (406)338-7806 |
| | |
| | |
| Assiniboine and Sioux Tribes of the Fort Peck Reservation | Chippewa-Cree Tribe: Rocky Boy's Reservation |
| ICWA Case Manager | ICWA Social Worker Chippewa-Cree Tribe of the |
| PO Box 1027 | Rocky Boy's Reservation |
| Poplar, MT 59255 | 31 Agency Square |
| (406)768-2402 | Box Elder, MT 59521 |
| | (406) 395-5705 x246 |
| | |
| | |
| Confederated Salish and Kootenai Tribes: Flathead Reservation | Crow Tribe: Crow Reservation |
| ICWA Specialist | ICWA Coordinator |
| CSKT/DHRD | Crow Tribe |
| Box 278 | PO Box 1060 |
| Pablo, MT 59855 | Crow Agency, MT 59022 |
| (406)675-2700 ext. 1120 | (406)679-3070 |
| | |
| | |
| Northern Cheyenne Tribe: Northern Cheyenne Reservation | Little Shell Tribe of Chippewa Indians of Montana |
| ICWA Director, Northern Cheyenne Human Services | Tribal Chair, Little Shell Tribe |
| Box 128 | 625 Central Ave W Ste 100 |
| Lame Deer, MT 59043 | Great Falls, MT 59404 |
| (406)477-8321 | (406)315-2400 |